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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 DION PERALTA DURAN

12 Plaintiff,

13 v.

14 COUNTY OF RIVERSIDE, *et al.*,

15 Defendants.
16
17

Case No. 5:23-cv-00106-AB (AFM)

**ORDER TO SHOW CAUSE WHY
THIS ACTION SHOULD NOT BE
DISMISSED AS TIME BARRED**

18 On January 20, 2023, plaintiff, proceeding *pro se*, filed this civil rights action
19 pursuant to 42 U.S.C. § 1983. (ECF No. 1.) Plaintiff presently is a state prisoner
20 incarcerated at Chuckawalla Valley State Prison in Blythe, California. Plaintiff was
21 granted leave to proceed without prepayment of the filing fees. (ECF Nos. 2, 4-5.)
22 Plaintiff signed and dated his Complaint on January 9, 2023.¹ (ECF No. 1 at 6.)
23 Plaintiff names as defendants in this action the County of Riverside (“County”), the
24 Riverside County Sheriff’s Department (“RCSD”), and two deputies with the RCSD
25 who are alleged to have been employed at the Cois Byrd Detention Center (“CBDC”)
26

27 ¹ Plaintiff stated within the body of the Complaint that it was “submitted” on January 20, 2023,
28 the same date on which it was filed with the court. (ECF No. 1 at 30.) Further, also on January 20,
2023, plaintiff signed a “Verification” that is attached to the pleading. (*Id.* at 31.)

1 in the County. (*Id.* at 3-4.) The incidents giving rise to this action occurred while
2 plaintiff was being held as a pretrial detainee at the CBDC and at an outside hospital
3 in Moreno Valley, California. (*Id.* at 2, 7.) Plaintiff is seeking monetary damages
4 and attorneys' fees. (*Id.* at 30.)

5 The face of plaintiff's Complaint clearly indicates that the incidents giving rise
6 to the claims that plaintiff is raising took place between January 15, 2018, and
7 September 7, 2018. (ECF No. 1 at 3, 7.) Within the factual allegations of the
8 pleading, plaintiff references multiple dates between January and September 2018,
9 but the latest date that he cites in connection with any of his factual allegations is
10 September 17, 2018. (*Id.* at 7-8, 15, 17-18.) Plaintiff's claims all arise from allegedly
11 unconstitutional medical care that he received while a pretrial detainee at the CBDC
12 and the allegedly unconstitutional restraints that were used on him while he was
13 receiving medical treatment at the outside hospital. (*Id.* at 7-21.) In addition, the
14 attachments to plaintiff's Complaint reference only events that took place between
15 August 16, 2018, and September 7, 2018. (*Id.* at 32-33, 39-40.)

16 In accordance with the mandate of the Prison Litigation Reform Act of 1995
17 ("PLRA"), the Court has screened the Complaint prior to ordering service to
18 determine whether the action is frivolous or malicious; fails to state a claim on which
19 relief may be granted; or seeks monetary relief against a defendant who is immune
20 from such relief. *See* 28 U.S.C. § 1915A; 42 U.S.C. § 1997e(c)(1). The Court's
21 screening of the pleading is governed by the following standards. A complaint may
22 be dismissed as a matter of law for failure to state a claim for two reasons: (1) lack
23 of a cognizable legal theory; or (2) insufficient facts alleged under a cognizable legal
24 theory. *See, e.g., Kwan v. SanMedica Int'l*, 854 F.3d 1088, 1093 (9th Cir. 2017); *see*
25 *also Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (when determining
26 whether a complaint should be dismissed for failure to state a claim under the PLRA,
27 the court applies the same standard as applied in a motion to dismiss pursuant to Fed.
28 R. Civ. P. 12(b)(6)). In determining whether the pleading states a claim on which

1 relief may be granted, its allegations of fact must be taken as true and construed in
2 the light most favorable to plaintiff. *See, e.g., Soltysik v. Padilla*, 910 F.3d 438, 444
3 (9th Cir. 2018). However, the “tenet that a court must accept as true all of the
4 allegations contained in a complaint is inapplicable to legal conclusions.” *Ashcroft*
5 *v. Iqbal*, 556 U.S. 662, 678 (2009). Rather, a court first “discount[s] conclusory
6 statements, which are not entitled to the presumption of truth, before determining
7 whether a claim is plausible.” *Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1129 (9th
8 Cir. 2013); *see also Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012).

9 Because plaintiff is appearing *pro se*, the Court must construe the allegations
10 of the pleading liberally and must afford plaintiff the benefit of any doubt. *See Hebbe*
11 *v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010); *see also Alvarez v. Hill*, 518 F.3d 1152,
12 1158 (9th Cir. 2008) (because plaintiff was proceeding *pro se*, “the district court was
13 required to ‘afford [him] the benefit of any doubt’ in ascertaining what claims he
14 ‘raised in his complaint’”) (alteration in original). Nevertheless, the Supreme Court
15 has held that “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to
16 relief’ requires more than labels and conclusions, and a formulaic recitation of the
17 elements of a cause of action will not do. . . . Factual allegations must be enough to
18 raise a right to relief above the speculative level . . . on the assumption that all the
19 allegations in the complaint are true (even if doubtful in fact).” *Bell Atlantic Corp.*
20 *v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted, alteration in
21 original); *see also Iqbal*, 556 U.S. at 678 (To avoid dismissal for failure to state a
22 claim, “a complaint must contain sufficient factual matter, accepted as true, to ‘state
23 a claim to relief that is plausible on its face.’ . . . A claim has facial plausibility when
24 the plaintiff pleads factual content that allows the court to draw the reasonable
25 inference that the defendant is liable for the misconduct alleged.” (internal citation
26 omitted)). Moreover, the Supreme Court has made clear that the Court has “no
27 obligation to act as counsel or paralegal to *pro se* litigants.” *Pliler v. Ford*, 542 U.S.
28 225, 231 (2004).

1 Federal civil rights claims brought pursuant to § 1983 are subject to the forum
2 state's statute of limitations applicable to personal injury claims. *See, e.g., Bird v.*
3 *Dep't of Human Servs.*, 935 F.3d 738, 743 (9th Cir. 2019) (citing *Wilson v. Garcia*,
4 471 U.S. 261, 276 (1985)). Federal civil rights claims arising in California are subject
5 to the two-year limitations period set forth in Cal. Civ. Proc. Code § 335.1. *See, e.g.,*
6 *Maldonado v. Harris*, 370 F.3d 945, 954-55 (9th Cir. 2004). Federal law, however,
7 determines when a civil rights claim accrues. *See McDonough v. Smith*, 139 S. Ct.
8 2149, 2155, 204 L. Ed. 2d 507 (2019) ("the time at which a § 1983 claim accrues is
9 a question of federal law" (internal quotation marks omitted)). A cause of action
10 typically accrues under federal law as soon as a potential "plaintiff knows or has
11 reason to know of the injury which is the basis of the action." *See Bird*, 935 F.3d at
12 743. In addition, a federal court must give effect to a state's tolling provisions. *See*
13 *Hardin v. Straub*, 490 U.S. 536, 539 (1989). Under California law, the continuous
14 incarceration of a plaintiff is a disability that tolls the statute of limitations for a
15 maximum of two years. *See* Cal. Civ. Proc. Code § 352.1 (expressly limiting tolling
16 arising from incarceration to a period not to exceed two years); *see, e.g., Jones v.*
17 *Blanas*, 393 F.3d 918, 927 (9th Cir. 2004) (California provides for statutory tolling
18 for a period of up to two years based on the disability of imprisonment).

19 In this case, plaintiff's federal civil rights claims arise from allegedly
20 inadequate medical care he received at the CBDC and allegedly unconstitutional
21 restraints that were used on him by RCSD deputies from CBDC while plaintiff was
22 being treated at an outside hospital between January 15, 2018, and September 7,
23 2018, or September 17, 2018. (*See* ECF No. 1 at 3, 7, 18.) The Complaint contains
24 numerous pages of factual allegations, and within his factual allegations, the latest
25 date that plaintiff cites in connection with any of his claims is September 17, 2018.
26 (*Id.* at 7, 18; *see also id.* at 32-33, 39-40.) Plaintiff alleges that he was discharged
27 from the outside hospital on September 17, 2018 and that he was transported to the
28 "Robert Presley Detention Center in Riverside." Two days later, plaintiff was moved

1 to the “Smith Correctional Facility in Banning, California.” (*Id.* at 18.) Plaintiff does
2 not allege that any individual at either of these other detention facilities caused
3 plaintiff to suffer any constitutional deprivation.

4 Plaintiff necessarily was aware of the allegedly unconstitutional restraints at
5 the time that they were applied at the outside hospital and prior to his discharge from
6 the hospital on September 17, 2018. In addition, plaintiff alleges that he was taken
7 from the CBDC to the outside hospital on August 16, 2018, and “a few days later”
8 he was informed by medical staff at the hospital that he was suffering from severe
9 health issues directly “stemming from” “a lack of medical attention ... for extended
10 periods of time.” (*Id.* at 14-15.) Plaintiff’s Complaint does not include any factual
11 allegations for any allegedly unconstitutional medical attention provided by any
12 medical professional at the CBDC after August 16, 2018, and plaintiff does not name
13 any defendants at any other detention facility. Accordingly, plaintiff must have been
14 aware of his claims for the allegedly unconstitutional medical care he received while
15 he was detained at the CBDC no later than a few days after his admission to the
16 outside hospital on August 16, 2018.

17 Any federal civil rights claims that plaintiff is raising in this action against the
18 named defendants necessarily accrued no later than the day on which plaintiff was
19 discharged from the outside hospital on September 17, 2018. Giving plaintiff the
20 benefit of any doubt, plaintiff appears to have been continually incarcerated since the
21 accrual of the federal civil rights claims that he is raising herein. His uninterrupted
22 incarceration entitles plaintiff to a *maximum* of two years of statutory tolling. *See*
23 Cal. Code Civ. Proc. § 352.1(a). Plaintiff signed his Complaint on January 9, 2023,
24 the earliest possible filing date for this action. (ECF No. 1 at 6.) Taking into account
25 plaintiff’s likely entitlement to two years of statutory tolling, plaintiff’s federal civil
26 rights claims had to have been raised no more than four years after September 17,
27 2018, the date of his discharge from the outside hospital and transfer to a different
28 detention facility, in order to be timely filed. Accordingly, absent other grounds for

1 tolling, the federal civil rights claims that plaintiff is raising in this action are time-
2 barred by nearly four months.

3 In California, a plaintiff may be entitled to equitable tolling if the plaintiff
4 shows that he or she provided timely notice to the defendants of the claims, no
5 prejudice resulted to the defendants, and he or she acted reasonably and in good faith
6 in filing the claims. *See Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d 1131,
7 1137-38 (9th Cir. 2001) (en banc) (citing *Collier v. City of Pasadena*, 142 Cal. App.
8 3d 917, 924 (1983) (setting forth California's requirements for equitable tolling)). In
9 his Complaint, plaintiff does not allege any facts giving rise to a plausible inference
10 that he was prevented from timely filing this action or that he acted reasonably and
11 in good faith rather than simply allowing the statute of limitations on his claims to
12 run. Under such circumstances, no inference is raised that plaintiff is entitled to
13 equitable tolling of his claims under California law. *See, e.g., Ervin v. Cnty. of*
14 *Los Angeles*, 848 F.2d 1018, 1019-20 (9th Cir. 1988) (finding a plaintiff was not
15 entitled to equitable tolling because she had "failed to show that she acted reasonably
16 and in good faith by delaying the filing of her federal civil rights action beyond the
17 statutory limitations period").

18 Following careful review of the Complaint and giving plaintiff the benefit of
19 any doubt, it appears to the Court that the present action must be dismissed without
20 leave to amend because any federal civil rights claims that plaintiff is raising in this
21 action are barred by the statute of limitations. A pleading may be dismissed on statute
22 of limitations grounds if "the statute of limitations issues are apparent on the face of
23 the complaint." *Rivera v. Peri & Sons Farms, Inc.*, 735 F.3d 892, 902 (9th Cir. 2013).
24 Because all of the facts alleged in the Complaint occurred while plaintiff was being
25 detained at the CBDC or being held in restraints by CBDC deputies while receiving
26 medical treatment at an outside hospital, plaintiff names no defendants from any
27 detention facility other than the CBDC, and plaintiff was released from the outside
28 hospital and transferred to a different detention facility on September 17, 2018

(which was more than four years before the earliest date on which he could be considered to have filed this action), it is clear from the face of the Complaint that plaintiff's federal civil rights claims are time-barred. Further, it appears clear that plaintiff will not be able to cure this basic deficiency in his claims through amendment. *See, e.g., Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (dismissal without leave to amend is proper when amendment would be futile); *Chaset v. Fleer/Skybox Int'l, LP*, 300 F.3d 1083, 1088 (9th Cir. 2002) (denial of leave to amend is not an abuse of discretion if the "basic flaw" in the underlying facts cannot be cured by amendment).

Plaintiff therefore is ordered to show cause, no later than June 9, 2023, why this action should not be summarily dismissed as barred by the statute of limitations. Plaintiff is advised that his failure to timely respond to this Order to Show Cause, or his failure to show why his action is not time-barred, will result in the Court recommending that the action be dismissed.

Alternatively, if plaintiff wishes, he may request a voluntary dismissal of the action pursuant to Federal Rule of Civil Procedure 41(a). The clerk also is directed to attach a Notice of Dismissal form for plaintiff's convenience.

IT IS SO ORDERED.

DATED: 5/11/2023



ALEXANDER F. MacKINNON
UNITED STATES MAGISTRATE JUDGE